

AMENDED IN SENATE AUGUST 18, 2005

AMENDED IN SENATE AUGUST 15, 2005

**SENATE BILL**

**No. 588**

**Introduced by Senators Runner, Denham, Hollingsworth, and  
Poochigian**

February 18, 2005

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An act to amend Sections 209, 220, 269, 290.3, 311.11, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 1170.125, 1203.06, 1203.065, 1203.075, 3000, 3001, 3003, 3003.5, 3004, and 12022.75 of, and to add Sections 288.3 and 3000.07 to, the Penal Code, and to amend Sections 6600, 6600.1, 6601, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to sex offenders, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, Runner. The Sexual Predator Punishment and Control Act: Jessica's Law.

Under existing law, the punishment for kidnapping with the intent to commit any of several specified sexual acts is imprisonment in the state prison for life with the possibility of parole.

This bill, to be known as the Sexual Predator Punishment and Control Act: Jessica's Law, would add rape committed in concert and committing lewd and lascivious acts to the above specified sexual acts.

Under existing law, the punishment for assault with intent to commit any of several specified sexual acts is imprisonment in the state prison for 2, 4, or 6 years.

This bill would provide that the punishment for assaulting another person with the intent to commit any of several specified sexual acts

while in the commission of a first degree burglary is imprisonment in the state prison for life with the possibility of parole.

Under existing law, a person who commits any of several sexual acts upon a child who is under 14 years of age and 10 or more years younger than the person, is guilty of aggravated sexual assault of a child.

This bill would change the age elements of the crime to 14 years of age and 7 or more years younger than the perpetrator, and would expand the types of sex offenses to which it would apply. The bill would require the court to impose a consecutive sentence for each offense that results in a conviction under this provision.

This bill would create a new felony offense for persons who contact or communicate with a minor, as defined, or who attempt to contact or communicate with a minor, or a person they know or reasonably should know is a minor, with the intent to commit any of several specified sex offenses.

Under existing law, the court is required to impose a fine of \$200 for the first conviction of a person who is convicted of a sex offense for which registration as a sex offender is required, and \$300 for a subsequent conviction.

This bill would increase those fines to \$300 and \$500, respectively, and would allocate \$100 from each fine to the Department of Corrections and Rehabilitation to defray the costs of global positioning systems used to monitor sex offender parolees.

Under existing law, it is a misdemeanor for a person to knowingly possess or control any matter or representation of information, data, or image, as specified, the production of which involves the use of a person under 18 years of age engaging in or simulating sexual conduct. If a person has previously been convicted of that crime, or other crimes related to child pornography, the punishment is imprisonment in the state prison for 2, 4, or 6 years.

This bill would increase the penalty for the first offense of that crime to a misdemeanor or felony. The bill would expand the types of crimes that would trigger punishment for a subsequent offense.

Existing law, which requires amendments to its provisions to be approved by 2/3 of the membership of both houses of the Legislature, defines “violent felony” for purposes of various provisions of the Penal Code.

This bill would include in that definition various sex offenses committed against a child who is under 14 years of age and more than 10 years younger than the perpetrator, or committed in concert.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex offense is 10 years. The enhanced term does not apply if that person has not been in custody for, or committed a felony during, at least 10 years between the instant and prior offense. Existing law requires the person to receive credits for time served or work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provision apply, delete the 10-year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

Under existing law, persons who are convicted of committing certain sex offense who have previously been convicted of other sex offenses, including habitual sexual offenders, as defined, or who are convicted of certain sex offenses during the commission of another offense, are eligible for credit to reduce the minimum term imposed.

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of these sex crimes.

This bill would add continuous sexual abuse of a child to those sex offenses.

Under existing law, the court has the authority to order an action dismissed or to strike a prior conviction, for purposes of sentencing a defendant.

This bill would prohibit a court from striking an allegation, admission, or finding of a prior conviction for, and would prohibit granting probation to, or suspending the execution or imposition of sentence for, defendants who are convicted of certain sex offenses.

Under existing law, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for any person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

Under existing law, any finding made that a person is a sexually violent predator, as specified, shall not toll, discharge, or otherwise affect that person's period of parole.

This bill would instead provide that the parole period of a person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole shall begin to run.

Under existing law, the period of parole for a person convicted of certain sex offenses is 5 years, which period may be extended for an additional 5 years after a hearing by the Board of Parole Hearings.

This bill would increase that period of parole to 10 years, would eliminate the possibility of extension of parole, and would authorize that person to be discharged from parole after 6 years, as specified.

Existing law requires all persons convicted of specified sex offense to register as a sex offender, as specified.

This bill would require every person who has been convicted of a felony that triggers the registration requirement, or an attempt to commit such a felony, who is released on parole, to be monitored by a global positioning system for the term of his or her parole. The bill would require the parolee to pay the cost of the monitoring, except upon a finding of the inability to pay. The bill would further require all of those persons to continue being monitored by a global positioning system, once discharged from parole, for the rest of their lives.

Existing law prohibits a person who was convicted of certain sex offenses with children from being placed or residing within 1/4 mile of any public or private school during the period of parole.

This bill would eliminate that prohibition and instead provide that it is unlawful for any person who is required to register as a sex offender to reside within 2000 feet of any public or private school, or any park where children regularly gather.

Existing law provides for an enhanced penalty of 3 years for any person who administers a controlled substance to another person against his or her will, for the purpose of committing a felony.

This bill would create an additional enhancement of 5 years if that felony is any of several specified sex offenses.

Existing law defines "conviction for a sexually violent offense" for purposes of laws pertaining to sexually violent predators.

This bill would expand that definition to include certain prior convictions, and would expand the definition of “sexually violent offense” for those purposes.

Under existing law, if the victim of certain specified sex offenses is a child under 14 years of age and the offending act involved substantial sexual conduct, the offense is considered a “sexually violent offense” for purposes of enhanced punishment.

This bill would eliminate the element of substantial sexual conduct from that definition.

Under existing law, if a person is determined to be a sexually violent predator, he or she is committed to the State Department of Mental Health for 2 years for appropriate treatment and confinement. Confinement may not be extended except by court order.

This bill would change that commitment to an indeterminate term, and would require an annual report to be made about the appropriateness of conditionally releasing the person to a less restrictive environment.

Because this bill would expand the scope of certain crimes, increase the penalties for certain crime, and create a new crime, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited as,
- 2 the Sexual Predator Punishment and Control Act: Jessica’s Law
- 3 SEC. 2. The Legislature finds and declares the following:
- 4 (a) The State of California currently places a high priority on
- 5 maintaining public safety through highly skilled and trained law
- 6 enforcement personnel as well as laws that deter and punish
- 7 criminal behavior.

1 (b) Sex offenders have very high recidivism rates. According  
2 to a 1998 report by the U.S. Department of Justice, sex offenders  
3 are the least likely to be cured and the most likely to reoffend,  
4 and they prey on the most innocent members of our society.  
5 More than two-thirds of the victims of rape and sexual assault are  
6 under 18 years of age. Sex offenders have a dramatically higher  
7 recidivism rate for their crimes than any other type of violent  
8 felon.

9 (c) Child pornography exploits children and robs them of their  
10 innocence. FBI studies have shown that pornography is very  
11 influential in the actions of sex offenders. Statistics show that 90  
12 percent of the predators who molest children have had some type  
13 of involvement with pornography. Predators often use child  
14 pornography to aid in their molestation.

15 (d) The universal use of the Internet has also ushered in an era  
16 of increased risk to our children by predators using this  
17 technology as a tool to lure children away from their homes and  
18 into dangerous situations. Therefore, to reflect society's  
19 disapproval of this type of activity, adequate penalties must be  
20 enacted to ensure predators cannot escape prosecution.

21 (e) With these changes, Californians will be in a better  
22 position to keep themselves, their children, and their  
23 communities safe from the threat posed by sex offenders.

24 (f) It is the intent of the people in enacting this measure to help  
25 Californians better protect themselves, their children, and their  
26 communities; it is not the intent of the people to embarrass or  
27 harass persons convicted of sex offenses.

28 (g) Californians have a right to know about the presence of sex  
29 offenders in their communities, near their schools, and around  
30 their children.

31 (h) California must also take additional steps to monitor sex  
32 offenders, to protect the public from them, and to provide  
33 adequate penalties for and safeguards against sex offenders,  
34 particularly those who prey on children. Existing laws that  
35 punish aggravated sexual assault, habitual sexual offenders, and  
36 child molesters must be strengthened and improved. In addition,  
37 existing laws that provide for the commitment and control of  
38 sexually violent predators must be strengthened and improved.

39 (i) Additional resources are necessary to adequately monitor  
40 and supervise sexual predators and offenders. It is vital that the

1 lasting effects of the assault do not further victimize victims of  
2 sexual assault.

3 (j) Global Positioning System technology is a useful tool for  
4 monitoring sexual predators and other sex offenders, and is a  
5 cost-effective measure for parole supervision. It is critical to have  
6 close supervision of this class of criminals to monitor these  
7 offenders and prevent them from committing other crimes.

8 (k) California is the only state, of the number of states that  
9 have enacted laws allowing involuntary civil commitments for  
10 persons identified as sexually violent predators, that does not  
11 provide for indeterminate commitments for those persons.  
12 California automatically allows for a jury trial every two years  
13 irrespective of whether there is any evidence to suggest or prove  
14 that the committed person is no longer a sexually violent  
15 predator. As such, this act allows California to protect the civil  
16 rights of those persons committed as a sexually violent predator  
17 while at the same time protecting society and the system from  
18 unnecessary or frivolous jury trial actions where there is no  
19 competent evidence to suggest a change in the committed person.

20 SEC. 3. Section 209 of the Penal Code is amended to read:

21 209. (a) Any person who seizes, confines, inveigles, entices,  
22 decoys, abducts, conceals, kidnaps or carries away another  
23 person by any means whatsoever with intent to hold or detain, or  
24 who holds or detains, that person for ransom, reward or to  
25 commit extortion or to exact from another person any money or  
26 valuable thing, or any person who aids or abets any of those acts,  
27 is guilty of a felony. Upon conviction thereof, a person shall be  
28 punished by imprisonment in the state prison for life without  
29 possibility of parole in cases in which any person subjected to  
30 any of those acts suffers death or bodily harm, or is intentionally  
31 confined in a manner which exposes that person to a substantial  
32 likelihood of death, or shall be punished by imprisonment in the  
33 state prison for life with the possibility of parole if the victim  
34 does not suffer death or bodily harm.

35 (b) (1) Any person who kidnaps or carries away any  
36 individual to commit robbery, rape, spousal rape, oral copulation,  
37 sodomy, or any violation of Section 264.1, 288, or 289, shall be  
38 punished by imprisonment in the state prison for life with the  
39 possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. (a) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288 or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.

(2) Rape or sexual penetration, in concert, in violation of Section 264.1.

(3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.



1 (4) Oral copulation, in violation of paragraph (2) or (3) of  
2 subdivision (c), or subdivision (d) of Section 288a.

3 (5) Sexual penetration, in violation of subdivision (a) of  
4 Section 289.

5 (b) Any person who violates this section is guilty of a felony  
6 and shall be punished by imprisonment in the state prison for 15  
7 years to life.

8 (c) The court shall impose a consecutive sentence for each  
9 offense that results in a conviction under this section if the crimes  
10 involve separate victims or involve the same victim on separate  
11 occasions, as defined in subdivision (d) of Section 667.6.

12 SEC. 6. Section 288.3 is added to the Penal Code, to read:

13 288.3. (a) Every person who contacts or communicates with  
14 a minor, or attempts to contact or communicate with a minor,  
15 who knows or reasonably should know that the person is a minor,  
16 with intent to commit an offense specified in Section 207, 209,  
17 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4  
18 or 311.11 involving the minor shall be punished by imprisonment  
19 in the state prison for the term prescribed for an attempt to  
20 commit the intended offense.

21 (b) As used in this section, “contacts or communicates with”  
22 shall include direct and indirect contact or communication that is  
23 achieved personally or by use of an agent or agency, any print  
24 medium, any postal service, a common carrier or communication  
25 common carrier, any electronic communications system, or any  
26 telecommunications, wire, computer, or radio communications  
27 device or system.

28 (c) A person convicted of a violation of subdivision (a) who  
29 previously has been convicted of a violation of subdivision (a)  
30 shall be punished by an additional and consecutive term of  
31 imprisonment in the state prison for five years.

32 SEC. 7. Section 290.3 of the Penal Code is amended to read:

33 290.3. (a) Every person who is convicted of any offense  
34 specified in subdivision (a) of Section 290 shall, in addition to  
35 any imprisonment or fine, or both, imposed for violation of the  
36 underlying offense, be punished by a fine of three hundred  
37 dollars (\$300) upon the first conviction or a fine of five hundred  
38 dollars (\$500) upon the second and each subsequent conviction,  
39 unless the court determines that the defendant does not have the  
40 ability to pay the fine.

1 An amount equal to all fines collected pursuant to this  
2 subdivision during the preceding month upon conviction of, or  
3 upon the forfeiture of bail by, any person arrested for, or  
4 convicted of, committing an offense specified in subdivision (a)  
5 of Section 290, shall be transferred once a month by the county  
6 treasurer to the Controller for deposit in the General Fund.  
7 Moneys deposited in the General Fund pursuant to this  
8 subdivision shall be transferred by the Controller as provided in  
9 subdivision (b).

10 (b) Except as provided in subdivision (d), out of the moneys  
11 deposited pursuant to subdivision (a) as a result of second and  
12 subsequent convictions of Section 290, one-third shall first be  
13 transferred to the Department of Justice Sexual Habitual  
14 Offender Fund, as provided in paragraph (1) of this subdivision.  
15 Out of the remainder of all moneys deposited pursuant to  
16 subdivision (a), 50 percent shall be transferred to the Department  
17 of Justice Sexual Habitual Offender Fund, as provided in  
18 paragraph (1), 25 percent shall be transferred to the Department  
19 of Justice DNA Testing Fund, as provided in paragraph (2), and  
20 25 percent shall be allocated equally to counties that maintain a  
21 local DNA testing laboratory, as provided in paragraph (3).

22 (1) Those moneys so designated shall be transferred to the  
23 Department of Justice Sexual Habitual Offender Fund created  
24 pursuant to paragraph (5) of subdivision (b) of Section 11170  
25 and, when appropriated by the Legislature, shall be used for the  
26 purposes of Chapter 9.5 (commencing with Section 13885) and  
27 Chapter 10 (commencing with Section 13890) of Title 6 of Part 4  
28 for the purpose of monitoring, apprehending, and prosecuting  
29 sexual habitual offenders.

30 (2) Those moneys so designated shall be directed to the  
31 Department of Justice and transferred to the Department of  
32 Justice DNA Testing Fund, which is hereby created, for the  
33 exclusive purpose of testing deoxyribonucleic acid (DNA)  
34 samples for law enforcement purposes. The moneys in that fund  
35 shall be available for expenditure upon appropriation by the  
36 Legislature.

37 (3) Those moneys so designated shall be allocated equally and  
38 distributed quarterly to counties that maintain a local DNA  
39 testing laboratory. Before making any allocations under this  
40 paragraph, the Controller shall deduct the estimated costs that

1 will be incurred to set up and administer the payment of these  
2 funds to the counties. Any funds allocated to a county pursuant to  
3 this paragraph shall be used by that county for the exclusive  
4 purpose of testing DNA samples for law enforcement purposes.

5 (c) Notwithstanding any other provision of this section, the  
6 Department of Corrections and Rehabilitation may collect a fine  
7 imposed pursuant to this section from a person convicted of a  
8 violation of any offense listed in subdivision (a) of Section 290,  
9 that results in incarceration in a facility under the jurisdiction of  
10 the Department of Corrections and Rehabilitation. All moneys  
11 collected by the Department of Corrections and Rehabilitation  
12 under this subdivision shall be transferred, once a month, to the  
13 Controller for deposit in the General Fund, as provided in  
14 subdivision (a), for transfer by the Controller, as provided in  
15 subdivision (b).

16 (d) An amount equal to one hundred dollars (\$100) for every  
17 fine imposed pursuant to subdivision (a) in excess of one  
18 hundred dollars (\$100) shall be transferred to the Department of  
19 Corrections and Rehabilitation to defray the cost of the global  
20 positioning system used to monitor sex offender parolees,  
21 pursuant to Section 3000.07.

22 SEC. 8. Section 311.11 of the Penal Code is amended to read:

23 311.11. (a) Every person who knowingly possesses or  
24 controls any matter, representation of information, data, or  
25 image, including, but not limited to, any film, filmstrip,  
26 photograph, negative, slide, photocopy, videotape, video laser  
27 disc, computer hardware, computer software, computer floppy  
28 disc, data storage media, CD-ROM, or computer-generated  
29 equipment or any other computer-generated image that contains  
30 or incorporates in any manner, any film or filmstrip, the  
31 production of which involves the use of a person under the age of  
32 18 years, knowing that the matter depicts a person under the age  
33 of 18 years personally engaging in or simulating sexual conduct,  
34 as defined in subdivision (d) of Section 311.4, is guilty of a  
35 public offense and shall be punished by imprisonment in the  
36 county jail for up to one year or in the state prison, or by a fine  
37 not exceeding two thousand five hundred dollars (\$2,500), or by  
38 both the fine and imprisonment.

39 (b) Every person who commits a violation of subdivision (a)  
40 and who has been previously convicted of a violation of this

1 section, an offense described in subparagraph (A) of paragraph  
2 (2) of subdivision (a) of Section 290, or an attempt to commit  
3 any of the offenses listed in this subdivision, is guilty of a felony  
4 and shall be punished by imprisonment for two, four, or six  
5 years.

6 (c) It is not necessary to prove that the matter is obscene in  
7 order to establish a violation of this section.

8 (d) This section does not apply to drawings, figurines, statues,  
9 or any film rated by the Motion Picture Association of America,  
10 nor does it apply to live or recorded telephone messages when  
11 transmitted, disseminated, or distributed as part of a commercial  
12 transaction.

13 SEC. 9. Section 667.1 of the Penal Code is amended to read:

14 667.1. Notwithstanding subdivision (h) of Section 667, for all  
15 offenses committed on or after the effective date of this act, all  
16 references to existing statutes in subdivisions (c) to (g), inclusive,  
17 of Section 667, are to those statutes as they existed on the  
18 effective date of this act, including amendments made to those  
19 statutes by the act enacted during the 2005-06 Regular Session  
20 that amended this section.

21 SEC. 10. Section 667.5 of the Penal Code is amended to read:

22 667.5. Enhancement of prison terms for new offenses because  
23 of prior prison terms shall be imposed as follows:

24 (a) Where one of the new offenses is one of the violent  
25 felonies specified in subdivision (c), in addition to and  
26 consecutive to any other prison terms therefor, the court shall  
27 impose a three-year term for each prior separate prison term  
28 served by the defendant where the prior offense was one of the  
29 violent felonies specified in subdivision (c). However, no  
30 additional term shall be imposed under this subdivision for any  
31 prison term served prior to a period of 10 years in which the  
32 defendant remained free of both prison custody and the  
33 commission of an offense which results in a felony conviction.

34 (b) Except where subdivision (a) applies, where the new  
35 offense is any felony for which a prison sentence is imposed, in  
36 addition and consecutive to any other prison terms therefor, the  
37 court shall impose a one-year term for each prior separate prison  
38 term served for any felony; provided that no additional term shall  
39 be imposed under this subdivision for any prison term served  
40 prior to a period of five years in which the defendant remained

1 free of both prison custody and the commission of an offense  
2 which results in a felony conviction.

3 (c) For the purpose of this section, “violent felony” shall mean  
4 any of the following:

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

7 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
8 of Section 261 or paragraph (1) or (4) of subdivision (a) of  
9 Section 262.

10 (4) Sodomy , as defined in subdivision (c) or (d) of Section  
11 286.

12 (5) Oral copulation, as defined in subdivision (c) or (d) of  
13 section 288a.

14 (6) Lewd or lascivious acts, as defined in subdivision (a) or (b)  
15 of Section 288.

16 (7) Any felony punishable by death or imprisonment in the  
17 state prison for life.

18 (8) Any felony in which the defendant inflicts great bodily  
19 injury on any person other than an accomplice which has been  
20 charged and proved as provided for in Section 12022.7 or  
21 12022.9 on or after July 1, 1977, or as specified prior to July 1,  
22 1977, in Sections 213, 264, and 461, or any felony in which the  
23 defendant uses a firearm which use has been charged and proved  
24 as provided in Section 12022.5 or 12022.55.

25 (9) Any robbery.

26 (10) Arson, in violation of subdivision (a) or (b) of Section  
27 451.

28 (11) Sexual penetration, as defined in subdivision (a) or (j) of  
29 Section 289.

30 (12) Attempted murder.

31 (13) A violation of Section 12308, 12309, or 12310.

32 (14) Kidnapping.

33 (15) Assault with the intent to commit a specified felony, in  
34 violation of Section 220.

35 (16) Continuous sexual abuse of a child, in violation of  
36 Section 288.5.

37 (17) Carjacking, as defined in subdivision (a) of Section 215.

38 (18) Rape, spousal rape, or sexual penetration, in concert, in  
39 violation of Section 264.1.

1 (19) Extortion, as defined in Section 518, which would  
2 constitute a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section  
4 136.1, which would constitute a felony violation of Section  
5 186.22 of the Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision  
7 (a) of Section 460, wherein it is charged and proved that another  
8 person, other than an accomplice, was present in the residence  
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418.

12 The Legislature finds and declares that these specified crimes  
13 merit special consideration when imposing a sentence to display  
14 society's condemnation for these extraordinary crimes of  
15 violence against the person.

16 (d) For the purposes of this section, the defendant shall be  
17 deemed to remain in prison custody for an offense until the  
18 official discharge from custody or until release on parole,  
19 whichever first occurs, including any time during which the  
20 defendant remains subject to reimprisonment for escape from  
21 custody or is reimprisoned on revocation of parole. The  
22 additional penalties provided for prior prison terms shall not be  
23 imposed unless they are charged and admitted or found true in  
24 the action for the new offense.

25 (e) The additional penalties provided for prior prison terms  
26 shall not be imposed for any felony for which the defendant did  
27 not serve a prior separate term in state prison.

28 (f) A prior conviction of a felony shall include a conviction in  
29 another jurisdiction for an offense which, if committed in  
30 California, is punishable by imprisonment in the state prison if  
31 the defendant served one year or more in prison for the offense in  
32 the other jurisdiction. A prior conviction of a particular felony  
33 shall include a conviction in another jurisdiction for an offense  
34 which includes all of the elements of the particular felony as  
35 defined under California law if the defendant served one year or  
36 more in prison for the offense in the other jurisdiction.

37 (g) A prior separate prison term for the purposes of this  
38 section shall mean a continuous completed period of prison  
39 incarceration imposed for the particular offense alone or in  
40 combination with concurrent or consecutive sentences for other

1 crimes, including any reimprisonment on revocation of parole  
2 which is not accompanied by a new commitment to prison, and  
3 including any reimprisonment after an escape from incarceration.

4 (h) Serving a prison term includes any confinement time in  
5 any state prison or federal penal institution as punishment for  
6 commission of an offense, including confinement in a hospital or  
7 other institution or facility credited as service of prison time in  
8 the jurisdiction of the confinement.

9 (i) For the purposes of this section, a commitment to the State  
10 Department of Mental Health as a mentally disordered sex  
11 offender following a conviction of a felony, which commitment  
12 exceeds one year in duration, shall be deemed a prior prison  
13 term.

14 (j) For the purposes of this section, when a person subject to  
15 the custody, control, and discipline of the Director of Corrections  
16 and Rehabilitation is incarcerated at a facility operated by the  
17 Division of Juvenile Facilities, that incarceration shall be deemed  
18 to be a term served in state prison.

19 (k) Notwithstanding subdivisions (d) and (g) or any other  
20 provision of law, where one of the new offenses is committed  
21 while the defendant is temporarily removed from prison pursuant  
22 to Section 2690 or while the defendant is transferred to a  
23 community facility pursuant to Section 3416, 6253, or 6263, or  
24 while the defendant is on furlough pursuant to Section 6254, the  
25 defendant shall be subject to the full enhancements provided for  
26 in this section.

27 This subdivision shall not apply when a full, separate, and  
28 consecutive term is imposed pursuant to any other provision of  
29 law.

30 SEC. 11. Section 667.51 of the Penal Code is amended to  
31 read:

32 667.51. (a) Any person who is convicted of violating Section  
33 288 or 288.5 shall receive a five-year enhancement for a prior  
34 conviction of an offense specified in subdivision (b).

35 (b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5,  
36 or 289, or any offense committed in another jurisdiction that  
37 includes all of the elements of any of the offenses specified in  
38 this subdivision.

39 (c)

1 A violation of Section 288 or 288.5 by a person who has been  
2 previously convicted two or more times of an offense specified in  
3 subdivision (b) shall be punished by imprisonment in the state  
4 prison for 15 years to life.

5 SEC. 12. Section 667.6 of the Penal Code is amended to read:

6 667.6. (a) Any person who is convicted of an offense  
7 specified in subdivision (e) and who has been convicted  
8 previously of any of those offenses shall receive a five-year  
9 enhancement for each of those prior convictions.

10 (b) Any person who is convicted of an offense specified in  
11 subdivision (e) and who has served two or more prior prison  
12 terms as defined in Section 667.5 for any of those offenses shall  
13 receive a 10-year enhancement for each of those prior terms.

14 (c) In lieu of the term provided in Section 1170.1, a full,  
15 separate, and consecutive term may be imposed for each  
16 violation of an offense specified in subdivision (e) if the crimes  
17 involved the same victim on the same occasion. A term may be  
18 imposed consecutively pursuant to this subdivision if a person is  
19 convicted of at least one offense specified in subdivision (e). If  
20 the term is imposed consecutively pursuant to this subdivision, it  
21 shall be served consecutively to any other term of imprisonment,  
22 and shall commence from the time the person otherwise would  
23 have been released from imprisonment. The term shall not be  
24 included in any determination pursuant to Section 1170.1. Any  
25 other term imposed subsequent to that term shall not be merged  
26 therein but shall commence at the time the person otherwise  
27 would have been released from prison.

28 (d) A full, separate, and consecutive term shall be imposed for  
29 each violation of an offense specified in subdivision (e) if the  
30 crimes involve separate victims or involve the same victim on  
31 separate occasions.

32 In determining whether crimes against a single victim were  
33 committed on separate occasions under this subdivision, the court  
34 shall consider whether, between the commission of one sex crime  
35 and another, the defendant had a reasonable opportunity to reflect  
36 upon his or her actions and nevertheless resumed sexually  
37 assaultive behavior. Neither the duration of time between crimes,  
38 nor whether or not the defendant lost or abandoned his or her  
39 opportunity to attack, shall be, in and of itself, determinative on



1 the issue of whether the crimes in question occurred on separate  
2 occasions.

3 The term shall be served consecutively to any other term of  
4 imprisonment and shall commence from the time the person  
5 otherwise would have been released from imprisonment. The  
6 term shall not be included in any determination pursuant to  
7 Section 1170.1. Any other term imposed subsequent to that term  
8 shall not be merged therein but shall commence at the time the  
9 person otherwise would have been released from prison.

10 (e) This section shall apply to the following offenses:

11 (1) Rape, in violation of paragraph (2), (3), (6), or (7) of  
12 subdivision (a) of Section 261.

13 (2) Spousal rape, in violation of paragraph (1), (4), or (5) of  
14 subdivision (a) of Section 262.

15 (3) Rape, spousal rape, or sexual penetration, in concert, in  
16 violation of Section 264.1.

17 (4) Sodomy, in violation of paragraph (2) or (3) of subdivision  
18 (c), or subdivision (d) or (k), of Section 286.

19 (5) Lewd or lascivious act, in violation of subdivision (b) of  
20 Section 288.

21 (6) Continuous sexual abuse of a child, in violation of Section  
22 288.5.

23 (7) Oral copulation, in violation of paragraph (2) or (3) of  
24 subdivision (c), or subdivision (d) or (k), of Section 288a.

25 (8) Sexual penetration, in violation of subdivision (a) or (g) of  
26 Section 289.

27 (9) As a present offense under subdivision (c) or (d), assault  
28 with intent to commit a specified sexual offense, in violation of  
29 Section 220.

30 (10) As a prior conviction under subdivision (a) or (b), an  
31 offense committed in another jurisdiction that includes all of the  
32 elements of an offense specified in this subdivision.

33 (f) In addition to any enhancement imposed pursuant to  
34 subdivision (a) or (b), the court may also impose a fine not to  
35 exceed twenty thousand dollars (\$20,000) for anyone sentenced  
36 under those provisions. The fine imposed and collected pursuant  
37 to this subdivision shall be deposited in the Victim-Witness  
38 Assistance Fund to be available for appropriation to fund child  
39 sexual exploitation and child sexual abuse victim counseling

1 centers and prevention programs established pursuant to Section  
2 13837.

3 (g) If the court orders a fine to be imposed pursuant to this  
4 section, the actual administrative cost of collecting that fine, not  
5 to exceed 2 percent of the total amount paid, may be paid into the  
6 general fund of the county treasury for the use and benefit of the  
7 county.

8 SEC. 13. Section 667.61 of the Penal Code is amended to  
9 read:

10 667.61. (a) Any person who is convicted of an offense  
11 specified in subdivision (c) under one or more of the  
12 circumstances specified in subdivision (d) or under two or more  
13 of the circumstances specified in subdivision (e) shall be  
14 punished by imprisonment in the state prison for 25 years to life.

15 (b) Except as provided in subdivision (a), any person who is  
16 convicted of an offense specified in subdivision (c) under one of  
17 the circumstances specified in subdivision (e) shall be punished  
18 by imprisonment in the state prison for 15 years to life.

19 (c) This section shall apply to any of the following offenses:

20 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
21 of Section 261.

22 (2) Spousal rape, in violation of paragraph (1) or (4) of  
23 subdivision (a) of Section 262.

24 (3) Rape, spousal rape, or sexual penetration, in concert, in  
25 violation of Section 264.1.

26 (4) A lewd or lascivious act, in violation of subdivision (b) of  
27 Section 288.

28 (5) Sexual penetration, in violation of subdivision (a) of  
29 Section 289.

30 (6) Sodomy , in violation of Section 286.

31 (7) Oral copulation, in violation of paragraph (2) or (3) of  
32 subdivision (c), or subdivision (d) of Section 288a.

33 (8) A lewd or lascivious act, in violation of subdivision (a) of  
34 Section 288.

35 (9) Continuous sexual abuse of a child, in violation of Section  
36 288.5.

37 (d) The following circumstances shall apply to the offenses  
38 specified in subdivision (c):

39 (1) The defendant has been previously convicted of an offense  
40 specified in subdivision (c), including an offense committed in

1 another jurisdiction that includes all of the elements of an offense  
2 specified in subdivision (c).

3 (2) The defendant kidnapped the victim of the present offense  
4 and the movement of the victim substantially increased the risk  
5 of harm to the victim over and above that level of risk necessarily  
6 inherent in the underlying offense in subdivision (c).

7 (3) The defendant inflicted aggravated mayhem or torture on  
8 the victim or another person in the commission of the present  
9 offense in violation of Section 205 or 206.

10 (4) The defendant committed the present offense during the  
11 commission of a burglary of the first degree, as defined in  
12 subdivision (a) of Section 460, with intent to commit an offense  
13 specified in subdivision (c).

14 (5) The defendant committed the present offense in violation  
15 of Section 264.1, subdivision (d) of Section 286, or subdivision  
16 (d) of Section 288a, and, in the commission of that offense, any  
17 person committed any act described in paragraph (2), (3), or (4)  
18 of this subdivision.

19 (e) The following circumstances shall apply to the offenses  
20 specified in subdivision (c):

21 (1) Except as provided in paragraph (2) of subdivision (d), the  
22 defendant kidnapped the victim of the present offense in  
23 violation of Section 207, 209, or 209.5.

24 (2) Except as provided in paragraph (4) of subdivision (d), the  
25 defendant committed the present offense during the commission  
26 of a burglary, in violation of Section 459.

27 (3) The defendant personally inflicted great bodily injury on  
28 the victim or another person in the commission of the present  
29 offense in violation of Section 12022.53, 12022.7, or 12022.8.

30 (4) The defendant personally used a dangerous or deadly  
31 weapon or firearm in the commission of the present offense in  
32 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

33 (5) The defendant has been convicted in the present case or  
34 cases of committing an offense specified in subdivision (c)  
35 against more than one victim.

36 (6) The defendant engaged in the tying or binding of the  
37 victim or another person in the commission of the present  
38 offense.

1 (7) The defendant administered a controlled substance to the  
2 victim in the commission of the present offense in violation of  
3 Section 12022.75.

4 (8) The defendant committed the present offense in violation  
5 of Section 264.1, subdivision (d) of Section 286, or subdivision  
6 (d) of Section 288a, and, in the commission of that offense, any  
7 person committed any act described in paragraph (1), (2), (3),  
8 (4), (6), or (7) of this subdivision.

9 (f) If only the minimum number of circumstances specified in  
10 subdivision (d) or (e) that are required for the punishment  
11 provided in subdivision (a) or (b) to apply have been pled and  
12 proved, that circumstance or those circumstances shall be used as  
13 the basis for imposing the term provided in subdivision (a) or (b),  
14 whichever is greater, rather than being used to impose the  
15 punishment authorized under any other provision of law, unless  
16 another provision of law provides for a greater penalty, or the  
17 punishment under another provision of law may be imposed in  
18 addition to the punishment provided by this section. However, if  
19 any additional circumstance or circumstances specified in  
20 subdivision (d) or (e) have been pled and proved, the minimum  
21 number of circumstances shall be used as the basis for imposing  
22 the term provided in subdivision (a), and any other additional  
23 circumstance or circumstances shall be used to impose any  
24 punishment or enhancement authorized under any other provision  
25 of law.

26 (g) Notwithstanding Section 1385 or any other provision of  
27 law, the court shall not strike any allegation, admission, or  
28 finding of any of the circumstances specified in subdivision (d)  
29 or (e) for any person who is subject to punishment under this  
30 section.

31 (h) Notwithstanding any other provision of law, probation  
32 shall not be granted to, nor shall the execution or imposition of  
33 sentence be suspended for, any person who is subject to  
34 punishment under this section.

35 (i) For any offense specified in paragraphs (1) to (7), inclusive,  
36 of subdivision (c), the court shall impose a consecutive sentence  
37 for each offense that results in a conviction under this section if  
38 the crimes involve separate victims or involve the same victim on  
39 separate occasions as defined in subdivision (d) of Section 667.6.

1 (j) The penalties provided in this section shall apply only if the  
2 existence of any circumstance specified in subdivision (d) or (e)  
3 is alleged in the accusatory pleading pursuant to this section and  
4 either admitted by the defendant in open court or found to be true  
5 by the trier of fact.

6 SEC. 14. Section 667.71 of the Penal Code is amended to  
7 read:

8 667.71. (a) For the purpose of this section, a habitual sexual  
9 offender is a person who has been previously convicted of one or  
10 more of the offenses specified in subdivision (c) and who is  
11 convicted in the present proceeding of one of those offenses.

12 (b) A habitual sexual offender shall be punished by  
13 imprisonment in the state prison for 25 years to life.

14 (c) This section shall apply to any of the following offenses:

15 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
16 of Section 261.

17 (2) Spousal rape, in violation of paragraph (1) or (4) of  
18 subdivision (a) of Section 262.

19 (3) Rape, spousal rape, or sexual penetration, in concert, in  
20 violation of Section 264.1.

21 (4) A lewd or lascivious act, in violation of subdivision (a) or  
22 (b) of Section 288.

23 (5) Sexual penetration, in violation of subdivision (a) or (j) of  
24 Section 289.

25 (6) Continuous sexual abuse of a child, in violation of Section  
26 288.5.

27 (7) Sodomy, in violation of subdivision (c) or (d) of Section  
28 286.

29 (8) Oral copulation, in violation of subdivision (c) or (d) of  
30 Section 288a .

31 (9) Kidnapping, in violation of subdivision (b) of Section 207.

32 (10) Kidnapping, in violation of former subdivision (d) of  
33 Section 208 (kidnapping to commit specified sex offenses).

34 (11) Kidnapping in violation of subdivision (b) of Section 209  
35 with the intent to commit a specified sexual offense.

36 (12) Aggravated sexual assault of a child, in violation of  
37 Section 269.

38 (13) An offense committed in another jurisdiction that  
39 includes all of the elements of an offense specified in this  
40 subdivision.

(d) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the trier of fact.

SEC. 15. Section 1170.125 of the Penal Code is amended to read:

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by the act enacted during the 2005-06 Regular Session that amended this section.

SEC. 16. Section 1203.06 of the Penal Code is amended to read:

1203.06. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207, 209, or 209.5.

(D) A lewd or lascivious act, in violation of Section 288.

(E) Burglary of the first degree, as defined in Section 460.

(F) Rape, in violation of Section 261, 262, or 264.1.

(G) Assault with intent to commit a specified sexual offense, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

- 1 (I) Carjacking, in violation of Section 215.
- 2 (J) Aggravated mayhem in violation of Section 205.
- 3 (K) Torture, in violation of Section 206.
- 4 (L) Continuous sexual abuse of a child, in violation of Section
- 5 288.5.
- 6 (M) A felony violation of Section 136.1 or 137.
- 7 (N) Sodomy, in violation of Section 286.
- 8 (O) Oral Copulation, in violation of Section 288a.
- 9 (P) Sexual penetration, in violation of Section 289 or 264.1.
- 10 (Q) Aggravated sexual assault of a child, in violation of
- 11 Section 269.

12 (2) Any person previously convicted of a felony specified in  
13 paragraph (1), or assault with intent to commit murder under  
14 former Section 217, who is convicted of a subsequent felony and  
15 who was personally armed with a firearm at any time during its  
16 commission or attempted commission or was unlawfully armed  
17 with a firearm at the time of his or her arrest for the subsequent  
18 felony.

19 (3) Aggravated arson, in violation of Section 451.5.

20 (b) (1) The existence of any fact that would make a person  
21 ineligible for probation under subdivision (a) shall be alleged in  
22 the accusatory pleading, and either admitted by the defendant in  
23 open court, or found to be true by the trier of fact.

24 (2)

25 As used in subdivision (a), “used a firearm” means to display  
26 a firearm in a menacing manner, to intentionally fire it, to  
27 intentionally strike or hit a human being with it, or to use it in  
28 any manner that qualifies under Section 12022.5.

29 (3) As used in subdivision (a), “armed with a firearm” means  
30 to knowingly carry or have available for use a firearm as a means  
31 of offense or defense.

32 SEC. 17. Section 1203.065 of the Penal Code is amended to  
33 read:

34 1203.065. (a) Notwithstanding any other provision of law,  
35 probation shall not be granted to, nor shall the execution or  
36 imposition of sentence be suspended for, any person who is  
37 convicted of violating paragraph (2) or (6) of subdivision (a) of  
38 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or  
39 paragraph (2) or (3) of subdivision (c) or subdivision (d) of

1 Section 286 or 288a, or subdivision (a) of Section 289, or  
2 subdivision (c) of Section 311.4.

3 (b) (1) Except in unusual cases where the interests of justice  
4 would best be served if the person is granted probation, probation  
5 shall not be granted to any person who is convicted of violating  
6 paragraph (7) of subdivision (a) of Section 261, subdivision (k)  
7 of Section 286, subdivision (k) of Section 288a, or Section 220  
8 for assault with intent to commit a specified sexual offense.

9 (2) When probation is granted, the court shall specify on the  
10 record and shall enter on the minutes the circumstances  
11 indicating that the interests of justice would best be served by the  
12 disposition.

13 SEC. 18. Section 1203.075 of the Penal Code is amended to  
14 read:

15 1203.075. (a) Notwithstanding any other provision of law,  
16 probation shall not be granted to, nor shall the execution or  
17 imposition of sentence be suspended for, nor shall a finding  
18 bringing the defendant within this section be stricken pursuant to  
19 Section 1385 for, any person who personally inflicts great bodily  
20 injury, as defined in Section 12022.7, on the person of another in  
21 the commission or attempted commission of any of the following  
22 crimes:

23 (1) Murder.

24 (2) Robbery, in violation of Section 211.

25 (3) Kidnapping, in violation of Section 207, 209, or 209.5.

26 (4) A lewd or lascivious act, in violation of Section 288.

27 (5) Burglary of the first degree, as defined in Section 460.

28 (6) Rape, in violation of Section 261, 262, or 264.1.

29 (7) Assault with intent to commit a specified sexual offense, in  
30 violation of Section 220.

31 (8) Escape, in violation of Section 4530 or 4532.

32 (9) Sexual penetration, in violation of subdivision (a) of  
33 Section 264.1 or 289.

34 (10) Sodomy, in violation of Section 286.

35 (11) Oral copulation, in violation of Section 288a.

36 (12) Carjacking, in violation of Section 215.

37 (13) Continuous sexual abuse of a child, in violation of  
38 Section 288.5.

39 (14) Aggravated sexual assault of a child, in violation of  
40 Section 269.



1 (b) The existence of any fact that would make a person  
2 ineligible for probation under subdivision (a) shall be alleged in  
3 the accusatory pleading, and either admitted by the defendant in  
4 open court, or found to be true by trier of fact.

5 SEC. 19. Section 3000 of the Penal Code is amended to read:

6 3000. (a) (1) The Legislature finds and declares that the  
7 period immediately following incarceration is critical to  
8 successful reintegration of the offender into society and to  
9 positive citizenship. It is in the interest of public safety for the  
10 state to provide for the supervision of and surveillance of  
11 parolees, including the judicious use of revocation actions, and to  
12 provide educational, vocational, family and personal counseling  
13 necessary to assist parolees in the transition between  
14 imprisonment and discharge. A sentence pursuant to Section  
15 1168 or 1170 shall include a period of parole, unless waived, as  
16 provided in this section.

17 (2) The Legislature finds and declares that it is not the intent  
18 of this section to diminish resources allocated to the Department  
19 of Corrections and Rehabilitation for parole functions for which  
20 the department is responsible. It is also not the intent of this  
21 section to diminish the resources allocated to the Board of Parole  
22 Hearings to execute its duties with respect to parole functions for  
23 which the board is responsible.

24 (3) The Legislature finds and declares that diligent effort must  
25 be made to ensure that parolees are held accountable for their  
26 criminal behavior, including, but not limited to, the satisfaction  
27 of restitution fines and orders.

28 (4) The parole period of any person found to be a sexually  
29 violent predator shall be tolled until that person is found to no  
30 longer be a sexually violent predator, at which time the period of  
31 parole, or any remaining portion thereof, shall begin to run.

32 (b) Notwithstanding any provision to the contrary in Article 3  
33 (commencing with Section 3040) of this chapter, the following  
34 shall apply:

35 (1) At the expiration of a term of imprisonment of one year  
36 and one day, or a term of imprisonment imposed pursuant to  
37 Section 1170 or at the expiration of a term reduced pursuant to  
38 Section 2931 or 2933, if applicable, the inmate shall be released  
39 on parole for a period not exceeding three years, except that any  
40 inmate sentenced for an offense specified in paragraph (3), (4),

1 (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5  
2 shall be released on parole for a period not exceeding five years,  
3 unless in either case the parole authority for good cause waives  
4 parole and discharges the inmate from the custody of the  
5 department.

6 (2) In the case of any inmate sentenced under Section 1168,  
7 the period of parole shall not exceed five years in the case of an  
8 inmate imprisoned for any offense other than first or second  
9 degree murder for which the inmate has received a life sentence,  
10 and shall not exceed three years in the case of any other inmate,  
11 unless in either case the parole authority for good cause waives  
12 parole and discharges the inmate from custody of the department.  
13 This subdivision shall also be applicable to inmates who  
14 committed crimes prior to July 1, 1977, to the extent specified in  
15 Section 1170.2.

16 (3) Notwithstanding paragraphs (1) and (2), in the case of any  
17 offense for which the inmate has received a life sentence  
18 pursuant to Section 667.61 or 667.71, the period of parole shall  
19 be 10 years.

20 (4) The parole authority shall consider the request of any  
21 inmate regarding the length of his or her parole and the  
22 conditions thereof.

23 (5) Upon successful completion of parole, or at the end of the  
24 maximum statutory period of parole specified for the inmate  
25 under paragraph (1), (2), or (3), as the case may be, whichever is  
26 earlier, the inmate shall be discharged from custody. The date of  
27 the maximum statutory period of parole under this subdivision  
28 and paragraphs (1), (2), and (3) shall be computed from the date  
29 of initial parole and shall be a period chronologically determined.  
30 Time during which parole is suspended because the prisoner has  
31 absconded or has been returned to custody as a parole violator  
32 shall not be credited toward any period of parole unless the  
33 prisoner is found not guilty of the parole violation. However, the  
34 period of parole is subject to the following:

35 (A) Except as provided in Section 3064, an inmate subject to  
36 three years on parole may not be retained under parole  
37 supervision or in custody for a period longer than four years from  
38 the date of his or her initial parole.

39 (B) Except as provided in Section 3064, an inmate subject to  
40 five years on parole may not be retained under parole supervision

1 or in custody for a period longer than seven years from the date  
2 of his or her initial parole.

3 (C) Except as provided in Section 3064, an inmate subject to  
4 10 years on parole may not be retained under parole supervision  
5 or in custody for a period longer than 15 years from the date of  
6 his or her initial parole.

7 (6) The Department of Corrections and Rehabilitation shall  
8 meet with each inmate at least 30 days prior to his or her good  
9 time release date and shall provide, under guidelines specified by  
10 the parole authority, the conditions of parole and the length of  
11 parole up to the maximum period of time provided by law. The  
12 inmate has the right to reconsideration of the length of parole and  
13 conditions thereof by the parole authority. The Department of  
14 Corrections and Rehabilitation or the Board of Parole Hearings  
15 may impose as a condition of parole that an inmate make  
16 payments on his or her outstanding restitution fines or orders  
17 imposed pursuant to subdivision (a) or (c) of Section 13967 of  
18 the Government Code, as operative prior to September 28, 1994,  
19 or subdivision (b) or (f) of Section 1202.4.

20 (7) For purposes of this chapter, the Board of Parole Hearings  
21 shall be considered the parole authority.

22 (8) The sole authority to issue warrants for the return to actual  
23 custody of any state inmate released on parole rests with the  
24 Board of Parole Hearings, except for any escaped state inmate or  
25 any state inmate released prior to his or her scheduled release  
26 date who should be returned to custody, and Section 3060 shall  
27 apply.

28 (9) It is the intent of the Legislature that efforts be made with  
29 respect to persons who are subject to subparagraph (C) of  
30 paragraph (1) of subdivision (a) of Section 290 who are on parole  
31 to engage them in treatment.

32 SEC. 20. Section 3000.07 is added to the Penal Code, to read:

33 3000.07. (a) Every person who has been convicted for any  
34 felony violation of a registerable sex offense described in  
35 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
36 290, or any attempt to commit any of those offenses, who is  
37 released on parole pursuant to Section 3000 or 3000.1, shall be  
38 monitored by a global positioning system for the term of his or  
39 her parole, or for the duration or any remaining part thereof,  
40 whichever period of time is less.

(b) A parolee shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the parolee has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the parolee pay for the global positioning system monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 21. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections and Rehabilitation recommends to the Board of Parole Hearings that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has

1 been on parole continuously for three years since release from  
2 confinement, the board shall discharge, within 30 days, the  
3 person from parole, unless the board, for good cause, determines  
4 that the person will be retained on parole. The board shall make a  
5 written record of its determination and the department shall  
6 transmit a copy thereof to the parolee.

7 (c) Notwithstanding any other provision of law, when any  
8 person referred to in paragraph (3) of subdivision (b) of Section  
9 3000 has been released on parole from the state prison, and has  
10 been on parole continuously for six years since release from  
11 confinement, the board shall discharge, within 30 days, the  
12 person from parole, unless the board, for good cause, determines  
13 that the person will be retained on parole. The board shall make a  
14 written record of its determination and the department shall  
15 transmit a copy thereof to the parolee.

16 (d) In the event of a retention on parole, the parolee shall be  
17 entitled to a review by the parole authority each year thereafter  
18 until the maximum statutory period of parole has expired.

19 (e) The amendments to this section made during the 1987–88  
20 Regular Session of the Legislature shall only be applied  
21 prospectively and shall not extend the parole period for any  
22 person whose eligibility for discharge from parole was fixed as  
23 of the effective date of those amendments.

24 SEC. 22. Section 3003 of the Penal Code is amended to read:

25 3003. (a) Except as otherwise provided in this section, an  
26 inmate who is released on parole shall be returned to the county  
27 that was the last legal residence of the inmate prior to his or her  
28 incarceration.

29 For purposes of this subdivision, “last legal residence” shall  
30 not be construed to mean the county wherein the inmate  
31 committed an offense while confined in a state prison or local jail  
32 facility or while confined for treatment in a state hospital.

33 (b) Notwithstanding subdivision (a), an inmate may be  
34 returned to another county if that would be in the best interests of  
35 the public. If the Board of Parole Hearings setting the conditions  
36 of parole for inmates sentenced pursuant to subdivision (b) of  
37 Section 1168, as determined by the parole consideration panel, or  
38 the Department of Corrections and Rehabilitation setting the  
39 conditions of parole for inmates sentenced pursuant to Section  
40 1170, decides on a return to another county, it shall place its

1 reasons in writing in the parolee's permanent record and include  
2 these reasons in the notice to the sheriff or chief of police  
3 pursuant to Section 3058.6. In making its decision, the paroling  
4 authority shall consider, among others, the following factors,  
5 giving the greatest weight to the protection of the victim and the  
6 safety of the community:

7 (1) The need to protect the life or safety of a victim, the  
8 parolee, a witness, or any other person.

9 (2) Public concern that would reduce the chance that the  
10 inmate's parole would be successfully completed.

11 (3) The verified existence of a work offer, or an educational or  
12 vocational training program.

13 (4) The existence of family in another county with whom the  
14 inmate has maintained strong ties and whose support would  
15 increase the chance that the inmate's parole would be  
16 successfully completed.

17 (5) The lack of necessary outpatient treatment programs for  
18 parolees receiving treatment pursuant to Section 2960.

19 (c) The Department of Corrections and Rehabilitation, in  
20 determining an out-of-county commitment, shall give priority to  
21 the safety of the community and any witnesses and victims.

22 (d) In making its decision about an inmate who participated in  
23 a joint venture program pursuant to Article 1.5 (commencing  
24 with Section 2717.1) of Chapter 5, the parole authority shall give  
25 serious consideration to releasing him or her to the county where  
26 the joint venture program employer is located if that employer  
27 states to the paroling authority that he or she intends to employ  
28 the inmate upon release.

29 (e) (1) The following information, if available, shall be  
30 released by the Department of Corrections and Rehabilitation to  
31 local law enforcement agencies regarding a paroled inmate who  
32 is released in their jurisdictions:

33 (A) Last, first, and middle name.

34 (B) Birth date.

35 (C) Sex, race, height, weight, and hair and eye color.

36 (D) Date of parole and discharge.

37 (E) Registration status, if the inmate is required to register as a  
38 result of a controlled substance, sex, or arson offense.

39 (F) California Criminal Information Number, FBI number,  
40 social security number, and driver's license number.

1 (G) County of commitment.

2 (H) A description of scars, marks, and tattoos on the inmate.

3 (I) Offense or offenses for which the inmate was convicted  
4 that resulted in parole in this instance.

5 (J) Address, including all of the following information:

6 (i) Street name and number. Post office box numbers are not  
7 acceptable for purposes of this subparagraph.

8 (ii) City and ZIP Code.

9 (iii) Date that the address provided pursuant to this  
10 subparagraph was proposed to be effective.

11 (K) Contact officer and unit, including all of the following  
12 information:

13 (i) Name and telephone number of each contact officer.

14 (ii) Contact unit type of each contact officer such as units  
15 responsible for parole, registration, or county probation.

16 (L) A digitized image of the photograph and at least a single  
17 digit fingerprint of the parolee.

18 (M) A geographic coordinate for the parolee's residence  
19 location for use with a Geographical Information System (GIS)  
20 or comparable computer program.

21 (2) The information required by this subdivision shall come  
22 from the statewide parolee database. The information obtained  
23 from each source shall be based on the same timeframe.

24 (3) All of the information required by this subdivision shall be  
25 provided utilizing a computer-to-computer transfer in a format  
26 usable by a desktop computer system. The transfer of this  
27 information shall be continually available to local law  
28 enforcement agencies upon request.

29 (4) The unauthorized release or receipt of the information  
30 described in this subdivision is a violation of Section 11143.

31 (f) Notwithstanding any other provision of law, an inmate who  
32 is released on parole shall not be returned to a location within 35  
33 miles of the actual residence of a victim of, or a witness to, a  
34 violent felony as defined in paragraphs (1) to (7), inclusive, of  
35 subdivision (c) of Section 667.5 or a felony in which the  
36 defendant inflicts great bodily injury on any person other than an  
37 accomplice that has been charged and proved as provided for in  
38 Section 12022.53, 12022.7, or 12022.9, if the victim or witness  
39 has requested additional distance in the placement of the inmate  
40 on parole, and if the Board of Parole Hearings or the Department

1 of Corrections and Rehabilitation finds that there is a need to  
2 protect the life, safety, or well-being of a victim or witness.

3 (g)

4 Notwithstanding any other law, an inmate who is released on  
5 parole for an offense involving stalking shall not be returned to a  
6 location within 35 miles of the victim's actual residence or place  
7 of employment if the victim or witness has requested additional  
8 distance in the placement of the inmate on parole, and if the  
9 Board of Parole Hearings or the Department of Corrections and  
10 Rehabilitation finds that there is a need to protect the life, safety,  
11 or well-being of the victim.

12 (h) The authority shall give consideration to the equitable  
13 distribution of parolees and the proportion of out-of-county  
14 commitments from a county compared to the number of  
15 commitments from that county when making parole decisions.

16 (i) An inmate may be paroled to another state pursuant to any  
17 other law.

18 (j) (1) Except as provided in paragraph (2), the Department of  
19 Corrections and Rehabilitation shall be the agency primarily  
20 responsible for, and shall have control over, the program,  
21 resources, and staff implementing the Law Enforcement  
22 Automated Data System (LEADS) in conformance with  
23 subdivision (e).

24 (2) Notwithstanding paragraph (1), the Department of Justice  
25 shall be the agency primarily responsible for the proper release of  
26 information under LEADS that relates to fingerprint cards.

27 SEC. 23. Section 3003.5 of the Penal Code is amended to  
28 read:

29 3003.5. (a) Notwithstanding any other provision of law,  
30 when a person is released on parole after having served a term of  
31 imprisonment in state prison for any offense for which  
32 registration is required pursuant to Section 290, that person may  
33 not, during the period of parole, reside in any single family  
34 dwelling with any other person also required to register pursuant  
35 to Section 290, unless those persons are legally related by blood,  
36 marriage, or adoption. For purposes of this section, "single  
37 family dwelling" shall not include a residential facility which  
38 serves six or fewer persons.

39 (b) Notwithstanding any other provision of law, it is unlawful  
40 for any person for whom registration is required pursuant to



1 Section 290 to reside within 2000 feet of any public or private  
2 school, or park where children regularly gather.

3 (c) Nothing in this section shall prohibit municipal  
4 jurisdictions from enacting local ordinances that further restrict  
5 the residency of any person for whom registration is required  
6 pursuant to Section 290.

7 SEC. 24. Section 3004 of the Penal Code is amended to read:

8 3004. (a) Notwithstanding any other law, the parole authority  
9 may require, as a condition of release on parole or reinstatement  
10 on parole, or as an intermediate sanction in lieu of return to  
11 prison, that an inmate or parolee agree in writing to the use of  
12 electronic monitoring or supervising devices for the purpose of  
13 helping to verify his or her compliance with all other conditions  
14 of parole. The devices shall not be used to eavesdrop or record  
15 any conversation, except a conversation between the parolee and  
16 the agent supervising the parolee which is to be used solely for  
17 the purposes of voice identification.

18 (b) Every person who has been convicted for any felony  
19 violation of a registerable sex offense described in subparagraph  
20 (A) of paragraph (2) of subdivision (a) of Section 290, or any  
21 attempt to commit any of those offenses, who is discharged from  
22 parole shall be monitored by a global positioning system for life.

23 (c) A person subject to subdivision (b) shall be required to pay  
24 for the costs associated with the monitoring by a global  
25 positioning system. However, the Department of Corrections and  
26 Rehabilitation shall waive any or all of that payment upon a  
27 finding of an inability to pay. The department shall consider any  
28 remaining amounts the person has been ordered to pay in fines,  
29 assessments and restitution fines, fees, and orders, and shall give  
30 priority to the payment of those items before requiring that the  
31 person pay for the global positioning monitoring.

32 SEC. 25. Section 12022.75 of the Penal Code is amended to  
33 read:

34 12022.75. (a) Except as provided in subdivision (b), any  
35 person who, for the purpose of committing a felony, administers  
36 by injection, inhalation, ingestion, or any other means, any  
37 controlled substance listed in Section 11054, 11055, 11056,  
38 11057, or 11058 of the Health and Safety Code, against the  
39 victim's will by means of force, violence, or fear of immediate  
40 and unlawful bodily injury to the victim or another person, shall,

1 in addition and consecutive to the penalty provided for the felony  
2 or attempted felony of which he or she has been convicted, be  
3 punished by an additional term of three years.

4 (b) (1) Any person who, in the commission or attempted  
5 commission of any offense specified in paragraph (2),  
6 administers any controlled substance listed in Section 11054,  
7 11055, 11056, 11057, or 11058 of the Health and Safety Code to  
8 the victim shall be punished by an additional and consecutive  
9 term of imprisonment in the state prison for five years.

10 (2) This subdivision shall apply to the following offenses:

11 (A) Rape, in violation of paragraph (3) or (4) of subdivision  
12 (a) of Section 261.

13 (B) Sodomy, in violation of subdivision (f) or (i) of Section  
14 286.

15 (C) Oral copulation, in violation of subdivision (f) or (i) of  
16 Section 288a.

17 (D) Sexual penetration, in violation of subdivision (d) or (e) of  
18 Section 289.

19 (E) Any offense specified in subdivision (c) of Section 667.61.

20 SEC. 26. Section 6600 of the Welfare and Institutions Code is  
21 amended to read:

22 6600. As used in this article, the following terms have the  
23 following meanings:

24 (a) (1) “Sexually violent predator” means a person who has  
25 been convicted of a sexually violent offense against one or more  
26 victims and who has a diagnosed mental disorder that makes the  
27 person a danger to the health and safety of others in that it is  
28 likely that he or she will engage in sexually violent criminal  
29 behavior.

30 (2) For purposes of this subdivision any of the following shall  
31 be considered a conviction for a sexually violent offense:

32 (A) A prior or current conviction that resulted in a determinate  
33 prison sentence for an offense described in subdivision (b).

34 (B) A conviction for an offense described in subdivision (b)  
35 that was committed prior to July 1, 1977, and that resulted in an  
36 indeterminate prison sentence.

37 (C) A prior conviction in another jurisdiction for an offense  
38 that includes all of the elements of an offense described in  
39 subdivision (b).

1 (D) A conviction for an offense under a predecessor statute  
2 that includes all of the elements of an offense described in  
3 subdivision (b).

4 (E) A prior conviction for which the inmate received a grant of  
5 probation for an offense described in subdivision (b).

6 (F) A prior finding of not guilty by reason of insanity for an  
7 offense described in subdivision (b).

8 (G) A conviction resulting in a finding that the person was a  
9 mentally disordered sex offender.

10 (H) A prior conviction for an offense described in subdivision  
11 (b) for which the person was committed to the Department of  
12 Corrections and Rehabilitation, Division of Juvenile Facilities,  
13 pursuant to Section 1731.5.

14 (I) A prior conviction for an offense described in subdivision  
15 (b) that resulted in an indeterminate prison sentence.

16 (3) Conviction of one or more of the crimes enumerated in this  
17 section shall constitute evidence that may support a court or jury  
18 determination that a person is a sexually violent predator, but  
19 shall not be the sole basis for the determination. The existence of  
20 any prior convictions may be shown with documentary evidence.  
21 The details underlying the commission of an offense that led to a  
22 prior conviction, including a predatory relationship with the  
23 victim, may be shown by documentary evidence, including, but  
24 not limited to, preliminary hearing transcripts, trial transcripts,  
25 probation and sentencing reports, and evaluations by the State  
26 Department of Mental Health. Jurors shall be admonished that  
27 they may not find a person a sexually violent predator based on  
28 prior offenses absent relevant evidence of a currently diagnosed  
29 mental disorder that makes the person a danger to the health and  
30 safety of others in that it is likely that he or she will engage in  
31 sexually violent criminal behavior.

32 (4) The provisions of this section shall apply to any person  
33 against whom proceedings were initiated for commitment as a  
34 sexually violent predator on or after January 1, 1996.

35 (b) “Sexually violent offense” means the following acts when  
36 committed by force, violence, duress, menace, fear of immediate  
37 and unlawful bodily injury on the victim or another person, or  
38 threatening to retaliate in the future against the victim or any  
39 other person, and that are committed on, before, or after the  
40 effective date of this article and result in a conviction or a finding

1 of not guilty by reason of insanity, as defined in subdivision (a):  
2 a felony violation of Section 261, 262, 264.1, 269, 286, 288,  
3 288a, 288.5 or 289 of the Penal Code, or any felony violation of  
4 Section 207, 209, or 220 of the Penal Code, committed with the  
5 intent to commit a violation of Section 261, 262, 264.1, 269, 288,  
6 288a, or 289 of the Penal Code.

7 (c) “Diagnosed mental disorder” includes a congenital or  
8 acquired condition affecting the emotional or volitional capacity  
9 that predisposes the person to the commission of criminal sexual  
10 acts in a degree constituting the person a menace to the health  
11 and safety of others.

12 (d) “Danger to the health and safety of others” does not  
13 require proof of a recent overt act while the offender is in  
14 custody.

15 (e) “Predatory” means an act is directed toward a stranger, a  
16 person of casual acquaintance with whom no substantial  
17 relationship exists, or an individual with whom a relationship has  
18 been established or promoted for the primary purpose of  
19 victimization.

20 (f) “Recent overt act” means any criminal act that manifests a  
21 likelihood that the actor may engage in sexually violent predatory  
22 criminal behavior.

23 (g) Notwithstanding any other provision of law and for  
24 purposes of this section, a prior juvenile adjudication of a  
25 sexually violent offense may constitute a prior conviction for  
26 which the person received a determinate term if all of the  
27 following apply:

28 (1) The juvenile was 16 years of age or older at the time he or  
29 she committed the prior offense.

30 (2) The prior offense is a sexually violent offense as specified  
31 in subdivision (b).

32 (3) The juvenile was adjudged a ward of the juvenile court  
33 within the meaning of Section 602 because of the person’s  
34 commission of the offense giving rise to the juvenile court  
35 adjudication.

36 (4) The juvenile was committed to the Department of  
37 Corrections and Rehabilitation, Division of Juvenile Facilities for  
38 the sexually violent offense.

39 (h) A minor adjudged a ward of the court for commission of  
40 an offense that is defined as a sexually violent offense shall be

1 entitled to specific treatment as a sexual offender. The failure of  
2 a minor to receive that treatment shall not constitute a defense or  
3 bar to a determination that any person is a sexually violent  
4 predator within the meaning of this article.

5 SEC. 27. Section 6600.1 of the Welfare and Institutions Code  
6 is amended to read:

7 6600.1. If the victim of an underlying offense that is  
8 specified in subdivision (b) of Section 6600 is a child under the  
9 age of 14, the offense shall constitute a “sexually violent offense”  
10 for purposes of Section 6600.

11 SEC. 28. Section 6601 of the Welfare and Institutions Code is  
12 amended to read:

13 6601. (a) (1) Whenever the Secretary of the Department of  
14 Corrections and Rehabilitation determines that an individual who  
15 is in custody under the jurisdiction of the department, and who is  
16 either serving a determinate prison sentence or whose parole has  
17 been revoked, may be a sexually violent predator, the secretary  
18 shall, at least six months prior to that individual’s scheduled date  
19 for release from prison, refer the person for evaluation in  
20 accordance with this section. However, if the inmate was  
21 received by the department with less than nine months of his or  
22 her sentence to serve, or if the inmate’s release date is modified  
23 by judicial or administrative action, the secretary may refer the  
24 person for evaluation in accordance with this section at a date  
25 that is less than six months prior to the inmate’s scheduled  
26 release date.

27 (2) A petition may be filed under this section if the individual  
28 was in custody pursuant to his or her determinate prison term,  
29 parole revocation term, or a hold placed pursuant to Section  
30 6601.3, at the time the petition is filed. A petition shall not be  
31 dismissed on the basis of a later judicial or administrative  
32 determination that the individual’s custody was unlawful, if the  
33 unlawful custody was the result of a good faith mistake of fact or  
34 law. This paragraph shall apply to any petition filed on or after  
35 January 1, 1996.

36 (b) The person shall be screened by the Department of  
37 Corrections and Rehabilitation and the Board of Parole Hearings  
38 based on whether the person has committed a sexually violent  
39 predatory offense and on a review of the person’s social,  
40 criminal, and institutional history. This screening shall be

1 conducted in accordance with a structured screening instrument  
2 developed and updated by the State Department of Mental Health  
3 in consultation with the Department of Corrections and  
4 Rehabilitation. If as a result of this screening it is determined that  
5 the person is likely to be a sexually violent predator, the  
6 Department of Corrections and Rehabilitation shall refer the  
7 person to the State Department of Mental Health for a full  
8 evaluation of whether the person meets the criteria in Section  
9 6600.

10 (c) The State Department of Mental Health shall evaluate the  
11 person in accordance with a standardized assessment protocol,  
12 developed and updated by the State Department of Mental  
13 Health, to determine whether the person is a sexually violent  
14 predator as defined in this article. The standardized assessment  
15 protocol shall require assessment of diagnosable mental  
16 disorders, as well as various factors known to be associated with  
17 the risk of reoffense among sex offenders. Risk factors to be  
18 considered shall include criminal and psychosexual history, type,  
19 degree, and duration of sexual deviance, and severity of mental  
20 disorder.

21 (d) Pursuant to subdivision (c), the person shall be evaluated  
22 by two practicing psychiatrists or psychologists, or one practicing  
23 psychiatrist and one practicing psychologist, designated by the  
24 Director of Mental Health. If both evaluators concur that the  
25 person has a diagnosed mental disorder so that he or she is likely  
26 to engage in acts of sexual violence without appropriate  
27 treatment and custody, the Director of Mental Health shall  
28 forward a request for a petition for commitment under Section  
29 6602 to the county designated in subdivision (i). Copies of the  
30 evaluation reports and any other supporting documents shall be  
31 made available to the attorney designated by the county pursuant  
32 to subdivision (i) who may file a petition for commitment.

33 (e) If one of the professionals performing the evaluation  
34 pursuant to subdivision (d) does not concur that the person meets  
35 the criteria specified in subdivision (d), but the other professional  
36 concludes that the person meets those criteria, the Director of  
37 Mental Health shall arrange for further examination of the person  
38 by two independent professionals selected in accordance with  
39 subdivision (g).

1 (f) If an examination by independent professionals pursuant to  
2 subdivision (e) is conducted, a petition to request commitment  
3 under this article shall only be filed if both independent  
4 professionals who evaluate the person pursuant to subdivision (e)  
5 concur that the person meets the criteria for commitment  
6 specified in subdivision (d). The professionals selected to  
7 evaluate the person pursuant to subdivision (g) shall inform the  
8 person that the purpose of their examination is not treatment but  
9 to determine if the person meets certain criteria to be  
10 involuntarily committed pursuant to this article. It is not required  
11 that the person appreciate or understand that information.

12 (g) Any independent professional who is designated by the  
13 Secretary of the Department of Corrections and Rehabilitation or  
14 the Director of Mental Health for purposes of this section shall  
15 not be a state government employee, shall have at least five years  
16 of experience in the diagnosis and treatment of mental disorders,  
17 and shall include psychiatrists and licensed psychologists who  
18 have a doctoral degree in psychology. The requirements set forth  
19 in this section also shall apply to any professionals appointed by  
20 the court to evaluate the person for purposes of any other  
21 proceedings under this article.

22 (h) If the State Department of Mental Health determines that  
23 the person is a sexually violent predator as defined in this article,  
24 the Director of Mental Health shall forward a request for a  
25 petition to be filed for commitment under this article to the  
26 county designated in subdivision (i). Copies of the evaluation  
27 reports and any other supporting documents shall be made  
28 available to the attorney designated by the county pursuant to  
29 subdivision (i) who may file a petition for commitment in the  
30 superior court.

31 (i) If the county's designated counsel concurs with the  
32 recommendation, a petition for commitment shall be filed in the  
33 superior court of the county in which the person was convicted of  
34 the offense for which he or she was committed to the jurisdiction  
35 of the Department of Corrections and Rehabilitation. The petition  
36 shall be filed, and the proceedings shall be handled, by either the  
37 district attorney or the county counsel of that county. The county  
38 board of supervisors shall designate either the district attorney or  
39 the county counsel to assume responsibility for proceedings  
40 under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 29. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.

SEC. 30. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights,



1 requirements, and procedures set forth in Section 6603 shall  
2 apply to all commitment proceedings.

3 SEC. 31. Section 6605 of the Welfare and Institutions Code is  
4 amended to read:

5 6605. (a) A person found to be a sexually violent predator  
6 and committed to the custody of the State Department of Mental  
7 Health shall have a current examination of his or her mental  
8 condition made at least once every year. The annual report shall  
9 include consideration of whether the committed person currently  
10 meets the definition of a sexually violent predator and whether  
11 conditional release to a less restrictive alternative or an  
12 unconditional release is in the best interest of the person, and  
13 conditions can be imposed that would adequately protect the  
14 community. The Department of Mental Health shall file this  
15 periodic report with the court that committed the person under  
16 this section. The report shall be in the form of a declaration and  
17 shall be prepared by a professionally qualified person. A copy of  
18 the report shall be served on the prosecuting agency involved in  
19 the initial commitment and upon the committed person. The  
20 person may retain, or if he or she is indigent and so requests, the  
21 court may appoint, a qualified expert or professional person to  
22 examine him or her, and the expert or professional person shall  
23 have access to all records concerning the person.

24 (b) If the Department of Mental Health determines that either:  
25 (1) the person's condition has so changed that the person no  
26 longer meets the definition of a sexually violent predator, or (2)  
27 conditional release to a less restrictive alternative is in the best  
28 interest of the person and conditions can be imposed that  
29 adequately protect the community, the director shall authorize the  
30 person to petition the court for conditional release to a less  
31 restrictive alternative or for an unconditional discharge. The  
32 petition shall be filed with the court and served upon the  
33 prosecuting agency responsible for the initial commitment. The  
34 court, upon receipt of the petition for conditional release to a less  
35 restrictive alternative or unconditional discharge, shall order a  
36 show cause hearing at which the court can consider the petition  
37 and any accompanying documentation provided by the medical  
38 director, the prosecuting attorney or the committed person.

39 (c) If the court at the show cause hearing determines that  
40 probable cause exists to believe that the committed person's

1 diagnosed mental disorder has so changed that he or she is not a  
2 danger to the health and safety of others and is not likely to  
3 engage in sexually violent criminal behavior if discharged, then  
4 the court shall set a hearing on the issue.

5 (d) At the hearing, the committed person shall have the right to  
6 be present and shall be entitled to the benefit of all constitutional  
7 protections that were afforded to him or her at the initial  
8 commitment proceeding. The attorney designated by the county  
9 pursuant to subdivision (i) of Section 6601 shall represent the  
10 state and shall have the right to demand a jury trial and to have  
11 the committed person evaluated by experts chosen by the state.  
12 The committed person also shall have the right to demand a jury  
13 trial and to have experts evaluate him or her on his or her behalf.  
14 The court shall appoint an expert if the person is indigent and  
15 requests an appointment. The burden of proof at the hearing shall  
16 be on the state to prove beyond a reasonable doubt that the  
17 committed person's diagnosed mental disorder remains such that  
18 he or she is a danger to the health and safety of others and is  
19 likely to engage in sexually violent criminal behavior if  
20 discharged.

21 (e) If the court or jury rules against the committed person at  
22 the hearing conducted pursuant to subdivision (d), the term of  
23 commitment of the person shall run for an indeterminate period  
24 from the date of this ruling. If the court or jury rules for the  
25 committed person, he or she shall be unconditionally released  
26 and unconditionally discharged.

27 (f) In the event that the State Department of Mental Health has  
28 reason to believe that a person committed to it as a sexually  
29 violent predator is no longer a sexually violent predator, it shall  
30 seek judicial review of the person's commitment pursuant to the  
31 procedures set forth in Section 7250 in the superior court from  
32 which the commitment was made. If the superior court  
33 determines that the person is no longer a sexually violent  
34 predator, he or she shall be unconditionally released and  
35 unconditionally discharged.

36 SEC. 32. Section 6608 of the Welfare and Institutions Code is  
37 amended to read:

38 6608. (a) Nothing in this article shall prohibit the person who  
39 has been committed as a sexually violent predator from  
40 petitioning the court for conditional release or an unconditional

1 discharge without the recommendation or concurrence of the  
2 Director of Mental Health. If a person has previously filed a  
3 petition for conditional release without the concurrence of the  
4 director and the court determined, either upon review of the  
5 petition or following a hearing, that the petition was frivolous or  
6 that the committed person's condition had not so changed that he  
7 or she would not be a danger to others in that it is not likely that  
8 he or she will engage in sexually violent criminal behavior if  
9 placed under supervision and treatment in the community, then  
10 the court shall deny the subsequent petition unless it contains  
11 facts upon which a court could find that the condition of the  
12 committed person had so changed that a hearing was warranted.  
13 Upon receipt of a first or subsequent petition from a committed  
14 person without the concurrence of the director, the court shall  
15 endeavor whenever possible to review the petition and determine  
16 if it is based upon frivolous grounds and, if so, shall deny the  
17 petition without a hearing. The person petitioning for conditional  
18 release and unconditional discharge under this subdivision shall  
19 be entitled to assistance of counsel.

20 (b) The court shall give notice of the hearing date to the  
21 attorney designated in subdivision (i) of Section 6601, the  
22 retained or appointed attorney for the committed person, and the  
23 Director of Mental Health at least 15 court days before the  
24 hearing date.

25 (c) No hearing upon the petition shall be held until the person  
26 who is committed has been under commitment for confinement  
27 and care in a facility designated by the Director of Mental Health  
28 for not less than one year from the date of the order of  
29 commitment.

30 (d) The court shall hold a hearing to determine whether the  
31 person committed would be a danger to the health and safety of  
32 others in that it is likely that he or she will engage in sexually  
33 violent criminal behavior due to his or her diagnosed mental  
34 disorder if under supervision and treatment in the community. If  
35 the court at the hearing determines that the committed person  
36 would not be a danger to others due to his or her diagnosed  
37 mental disorder while under supervision and treatment in the  
38 community, the court shall order the committed person placed  
39 with an appropriate forensic conditional release program  
40 operated by the state for one year. A substantial portion of the

1 state-operated forensic conditional release program shall include  
2 outpatient supervision and treatment. The court shall retain  
3 jurisdiction of the person throughout the course of the program.  
4 At the end of one year, the court shall hold a hearing to  
5 determine if the person should be unconditionally released from  
6 commitment on the basis that, by reason of a diagnosed mental  
7 disorder, he or she is not a danger to the health and safety of  
8 others in that it is not likely that he or she will engage in sexually  
9 violent criminal behavior. The court shall not make this  
10 determination until the person has completed at least one year in  
11 the state-operated forensic conditional release program. The  
12 court shall notify the Director of Mental Health of the hearing  
13 date.

14 (e) Before placing a committed person in a state-operated  
15 forensic conditional release program, the community program  
16 director designated by the State Department of Mental Health  
17 shall submit a written recommendation to the court stating which  
18 forensic conditional release program is most appropriate for  
19 supervising and treating the committed person. If the court does  
20 not accept the community program director's recommendation,  
21 the court shall specify the reason or reasons for its order on the  
22 record. The procedures described in Sections 1605 to 1610,  
23 inclusive, of the Penal Code shall apply to the person placed in  
24 the forensic conditional release program.

25 (f) If the court determines that the person should be transferred  
26 to a state-operated forensic conditional release program, the  
27 community program director, or his or her designee, shall make  
28 the necessary placement arrangements and, within 21 days after  
29 receiving notice of the court's finding, the person shall be placed  
30 in the community in accordance with the treatment and  
31 supervision plan unless good cause for not doing so is presented  
32 to the court.

33 (g) If the court rules against the committed person at the trial  
34 for unconditional release from commitment, the court may place  
35 the committed person on outpatient status in accordance with the  
36 procedures described in Title 15 (commencing with Section  
37 1600) of Part 2 of the Penal Code.

38 (h) If the court denies the petition to place the person in an  
39 appropriate forensic conditional release program or if the petition  
40 for unconditional discharge is denied, the person may not file a

1 new application until one year has elapsed from the date of the  
2 denial.

3 (i) In any hearing authorized by this section, the petitioner  
4 shall have the burden of proof by a preponderance of the  
5 evidence.

6 (j) If the petition for conditional release is not made by the  
7 director of the treatment facility to which the person is  
8 committed, no action on the petition shall be taken by the court  
9 without first obtaining the written recommendation of the  
10 director of the treatment facility.

11 (k) Time spent in a conditional release program pursuant to  
12 this section shall not count toward the term of commitment under  
13 this article unless the person is confined in a locked facility by  
14 the conditional release program, in which case the time spent in a  
15 locked facility shall count toward the term of commitment.

16 SEC. 33. No reimbursement is required by this act pursuant  
17 to Section 6 of Article XIII B of the California Constitution  
18 because the only costs that may be incurred by a local agency or  
19 school district will be incurred because this act creates a new  
20 crime or infraction, eliminates a crime or infraction, or changes  
21 the penalty for a crime or infraction, within the meaning of  
22 Section 17556 of the Government Code, or changes the  
23 definition of a crime within the meaning of Section 6 of Article  
24 XIII B of the California Constitution.

25 SEC. 34. *This act is an urgency statute necessary for the*  
26 *immediate preservation of the public peace, health, or safety*  
27 *within the meaning of Article IV of the Constitution and shall go*  
28 *into immediate effect. The facts constituting the necessity are:*

29 *Due to the immediate threat that sexual predators pose to*  
30 *children of the State of California, it is necessary that this act*  
31 *take effect immediately.*